

## REMARKS

### I. Introduction

Claims **1, 3-24, 27-30, 33, and 35-36** are currently pending in the present application. Claims **1, 30, 33, and 35** are independent. All claims stand rejected. In particular:

(A) claims **10, 15-18, 27, and 29** stand rejected under 35 U.S.C. §112, second paragraph, for being indefinite;

(B) claims **1-2, 5, 8, 14-15, 22, 24, 27, 30, and 35** stand rejected under alleged non-statutory double patenting principles as being unpatentable over U.S. Patent No. 5,926,796 (hereinafter “Walker”) in view of U.S. Patent No. 6,138,911 (hereinafter “Fredregill”), in further view of U.S. Patent No. 5,758,322 (hereinafter “Rongley”);

(C) claims **1, 3-8, 10-12, 14-18, 19-21, 23-24, 27, 29-30, and 35-36** stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 5,826,240 (hereinafter “Brockman”);

(D) claims **1, 3-5, 7-8, 11-17, 19-20, 22-24, and 28** stand rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Fredregill in view of Rongley;

(E) claim **33** stands rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Fredregill in view of Rongley, in further view of U.S. Patent No. 5,893,075 (hereinafter “Plainfield”);

(F) claim **21** stands rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Fredregill in view of Rongley, in further view of www.atpos.com (hereinafter “@POS”); and

(G) claims **17-18, 29, and 33** stand rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Brockman.

Upon entry of this amendment, which is respectfully requested, claims **1, 10, 15, 20, 28-30, 33, and 35** will be amended solely to advance prosecution, and new claims **37-44** will be added. No new matter is believed to be introduced by this amendment.

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the amendments and remarks provided herein and in accordance with 37 C.F.R. §1.112.

## II. The Examiner's Rejections

All pending claims stand rejected. Applicants respectfully traverse all grounds for rejection, to be addressed separately, as follows.

### A. Rejections Under §112, second paragraph

Claims **10**, **15-18**, **27**, and **29** stand rejected under 35 U.S.C. §112, second paragraph, for being indefinite. Applicants amend claim **10** herein to clarify that it is “the transaction information” that is being referred to, and Applicants amend claim **15** herein to correct the dependency of claim **15** from now cancelled claim **2**, to claim **1**. Applicants accordingly respectfully request that the §112, second paragraph rejections of claims **10**, **15-18**, **27**, and **29** be withdrawn.

### B. Double Patenting Rejections – Walker, Fredregill, Rongley

Claims **1**<sup>1</sup>, **5**, **8**, **14-15**, **22**, **24**, **27**, **30**, and **35** stand rejected under alleged non-statutory double patenting principles as being unpatentable over Walker in view of Fredregill, in further view of Rongley. Initially, Applicants note that no remarks presented or not presented herein should be construed as implying Applicants' agreement with any statements or characterizations made by the Examiner with respect to the Walker reference. In other words, any of the Examiner's representations or characterization of Walker are not addressed at this time, which in no way implies agreement therewith or admittance thereof. Applicants presently traverse the double patenting ground for rejection as follows.

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<sup>1</sup> The Examiner also lists claim **2** as rejected under this ground; Applicants note, however, that claim **2** has been cancelled, and this ground of rejection with respect to claim **2** is therefore moot.

**1. The Examiner fails to show how the references teach or suggest: *prompting, in the case that a timing condition associated with a merchant is satisfied, an attendant to present the query* (claims 1, 5, 8, 14-15, 22, 24, 27, and 30)**

The Examiner utterly fails to address this limitation with respect to this ground for rejection. Nowhere, for example, does the Examiner allege that any of Walker, Fredregill, or Rongley teaches or suggest *prompting, in the case that a timing condition associated with a merchant is satisfied, an attendant to present the query*.

At least for this reason, the Examiner has entirely failed to establish a *prima facie* case of obviousness necessary to support this double patenting ground for rejection. Accordingly, Applicants respectfully request that this double patenting ground for rejection of claims 1, 5, 8, 14-15, 22, 24, 27, and 30 be withdrawn.

**2. The Examiner fails to show how the references teach or suggest: *rewarding the attendant in the case that it is determined that the attendant properly presents the at least first query* (claims 30 and 35)**

Although presented with respect to a different grounds for rejection, since the Examiner relies upon an allegedly “inherent” feature of Fredregill to teach compensating an attendant for properly presenting the query (Non-final Office Action mailed on July 6, 2006 as Part of Paper No./Mail Date (hereinafter the “Office Action”), pg. 10, lines 6-8), Applicants address this argument presently.

Applicants note that while “express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. [sic] 102 or 103” (MPEP §2112), “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” *Id.* at IV; *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte*

Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original); MPEP §2112, at IV.

Applicants respectfully note that while an attendant may certainly be paid for performing certain duties, there is no indication in Fredregill that one of those duties comprises presenting queries to customers. Indeed, in a system such as Fredregill, it seems more likely that presenting queries, if it is contemplated at all, may be done as an ancillary part of the attendant's employment. In other words, the attendant is not compensated specifically for presenting queries, not presenting queries, presenting queries well, or presenting queries poorly. Instead, the attendant is compensated in general for showing up to work, and whether certain aspects of the work are done properly or not may weight toward how good of an employee the attendant is, but may certainly not affect the attendant's compensation. Accordingly, being compensated for presenting queries correctly does not necessarily flow from the reference.

Applicants further note that the even if the Examiner's allegation of inherency was correct (which Applicants maintain is not the case), the material that the Examiner alleges is inherent fails to address the claimed limitation. The claimed limitation, for example, does not recite simply compensating an employee, which is undoubtedly well known. Instead, claims **30** and **35** recite ***rewarding*** an employee for properly reciting a prompted query. This is necessarily different than the employee's standard compensation. Thus, the Examiner's allegedly inherent material fails to address or in any way render obvious the claimed limitation.

Accordingly, at least because the Examiner has failed to show how any of Walker, Fredregill, or Rongley teaches or suggests (either explicitly or inherently) *rewarding the attendant in the case that it is determined that the attendant properly presents the at least first query*, the Examiner has failed to set forth a *prima facie* case of obviousness with respect to claims **30** and **35**. Applicants therefore respectfully request that this double patenting ground for rejection of claims **30** and **35** be withdrawn.

**C. Rejections Under §102(e) – Brockman**

Claims **1, 3-8, 10-12, 14-18, 19-21, 23-24, 27, 29-30, and 35-36** stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Brockman. Applicants traverse this ground for rejection as follows.

**1. The reference fails to teach or suggest: *prompting, in the case that a timing condition associated with a merchant is satisfied, an attendant to present the query* (claims **1, 3-8, 10-12, 14-18, 19-21, 23-24, 27, 29-30, and 36**)**

Applicants respectfully assert that Brockman fails to teach or suggest limitations of claims **1, 3-8, 10-12, 14-18, 19-21, 23-24, 27, 29-30, and 36**. In particular, Brockman fails to teach or suggest *prompting, in the case that a timing condition associated with a merchant is satisfied, an attendant to present the query*.

The Examiner states that Brockman teaches the claimed “timing limitation” by teaching that younger customers may be offered special financing options (*e.g.*, for first time buyers), and that this is essentially based on an amount of time from the customers date of birth. Office Action, pg. 7, first paragraph.

Applicants respectfully point out that the condition identified by the Examiner as existent in Brockman is generally known as a ‘condition associated with the age of the customer’, not a “timing condition associated with a merchant”, as claimed. Further, various types of “timing conditions associated with a merchant” are described in Applicants’ specification as filed (and are at least currently claimed in claims **36-38**); none of which are remotely contemplated by Brockman – highlighting the already clear difference between the condition utilized in Brockman as contrasted to the claimed “timing condition associated with a merchant.”

Accordingly, at least because Brockman fails to teach or suggest *prompting, in the case that a timing condition associated with a merchant is satisfied, an attendant to present the query*, Brockman fails to anticipate claims **1, 3-8, 10-12, 14-18, 19-21, 23-24, 27, 29-30, and 36**. Applicants therefore respectfully request that this §102(e) ground for rejection of claims **1, 3-8, 10-12, 14-18, 19-21, 23-24, 27, 29-30, and 36** be withdrawn.

**2. The reference fails to teach or suggest: *rewarding the attendant in the case that it is determined that the attendant properly presents the at least first query* (claims **29-30** and **35**; generally)**

Applicants respectfully assert that Brockman fails to teach or suggest limitations of claims **29-30** and **35**. In particular, Brockman fails to teach or suggest *rewarding the attendant in the case that it is determined that the attendant properly presents the at least first query*.

As described in Section B.2. herein, the Examiner misinterprets the claimed limitations that recite compensating and/or rewarding the attendant for properly presenting the queries. The Examiner, for example, believes that standard employee compensation is covered by the above-quoted pending limitation. This, however, is simply not the case. Standard employee compensation is not equivalent to ‘compensation for properly presenting queries’, particularly in the case where proper presentation is not tracked or monitored (as it is not in Brockman; as described herein).

Standard employee compensation is generally provided for general or overall work performed, not for proper completion of merely one task that may be ancillary to the employee’s overall duties. Instead, the claimed limitation is directed to specifically providing compensation for the proper completion of a specific task – properly presenting queries. Based on the general state and function of general employment, it seems more likely that an employee that does not properly present queries in Brockman (if such a metric were even tracked, which it is not) may simply not get a good performance review. There is absolutely no indication that such poor performance would effect the employee’s compensation, however, and such a conclusion certainly does not necessarily flow from the teachings of the reference, and is therefore not inherent thereto.

Accordingly, at least because Brockman fails to teach or suggest *rewarding the attendant in the case that it is determined that the attendant properly presents the at least first query*, Brockman fails to anticipate claims **29-30** and **35**. Applicants therefore respectfully request that this §102(e) ground for rejection of claims **29-30** and **35** be withdrawn.

**3. The reference fails to teach or suggest: *selecting a query based at least in part on the UPC identifying the product* (claim 35)**

Applicants respectfully assert that Brockman fails to teach or suggest limitations of claim 35. In particular, Brockman fails to teach or suggest *selecting a query based at least in part on the UPC identifying the product*.

Brockman describes presenting pre-programmed question sequences to employees of an establishment. Nowhere does Brockman describe selecting any of the questions based on a product UPC. Indeed, as Brockman is primarily directed to car sales, UPC concepts are not even contemplated by Brockman.

In contrast, the above-quoted limitation allows queries to be selected based on a product UPC. Scanning of a UPC barcode may, for example, trigger a selection of a specific query. Such a concept is not contemplated by the car sales environment of Brockman.

Accordingly, at least because Brockman fails to teach or suggest *selecting a query based at least in part on the UPC identifying the product*, Brockman fails to anticipate claim 35. Applicants therefore respectfully request that this §102(e) rejection of claim 35 be withdrawn.

**4. The reference fails to teach or suggest: *analyzing the verbal response to determine if a remediation response is required* (claim 35)**

Applicants respectfully assert that Brockman fails to teach or suggest limitations of claim 35. In particular, Brockman fails to teach or suggest *analyzing the verbal response to determine if a remediation response is required*.

The Examiner simply misinterprets Brockman. The Examiner states, for example, that Brockman describes determining if a counteroffer is required. Office Action, pg. 7, lines 11-14. This is simply not the case. Instead, the portion of Brockman cited by the Examiner describes allowing the salesperson to transmit offers and counteroffers to other devices on the network, such as the manager's device, to reduce the number of trips the salesperson must make to present such offers to the manager for approval. In other words, the offers AND counteroffers described by Brockman are **requests received from the customer, not counteroffers transmitted to the customer**. Thus, Brockman does not

describe transmitting counteroffers to customers, much less determining if such non-existent counteroffers are required by analyzing a verbal response of the customer. Further, Brockman certainly does not contemplate the types of remediation responses recited in new claim 44.

Accordingly, at least because Brockman fails to teach or suggest *analyzing the verbal response to determine if a remediation response is required*, Brockman fails to anticipate claim 35. Applicants therefore respectfully request that this §102(e) rejection of claim 35 be withdrawn.

**5. The reference fails to teach or suggest: *analyzing, by the processing device, if the attendant properly presented the query* (claims 20 and 29; generally)**

Applicants respectfully assert that Brockman fails to teach or suggest limitations of claims 20 and 29. In particular, Brockman fails to teach or suggest *analyzing, by the processing device, if the attendant properly presented the query*.

The portion of Brockman that the Examiner cites in support of the allegation that Brockman teaches the above-quoted limitation describes post-sales managerial review of the recorded exchange between the salesperson and the customer. This is simply not equivalent to voice analysis processing conducted by a processing device, such as may occur substantially during or immediately following the transaction – which allows remediation, as recited in some pending claims. Post-sales manual analysis as described in Brockman does not allow for the opportunity to remediate transactional issues, as the review is conducted manually, long after the transaction is complete.

Accordingly, at least because Brockman fails to teach or suggest *analyzing, by the processing device, if the attendant properly presented the query*, Brockman fails to anticipate claims 20 and 29. Applicants therefore respectfully request that this §102(e) ground for rejection of claims 20 and 29 be withdrawn.



**D. Rejections Under §103(a) – Fredregill, Rongley**

Claims **1, 3-5, 7-8, 11-17, 19-20, 22-24, and 28** stand rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Fredregill in view of Rongley. Applicants traverse this ground for rejection as follows.

**1. The references fails to teach or suggest: *prompting, in the case that a timing condition associated with a merchant is satisfied, an attendant to present the query***

Applicants respectfully assert that Fredregill and Rongley, alone or in combination, fail to teach or suggest limitations of claims **1, 3-5, 7-8, 11-17, 19-20, 22-24, and 28**. In particular, Fredregill and Rongley fail to teach or suggest *prompting, in the case that a timing condition associated with a merchant is satisfied, an attendant to present the query*.

The Examiner fails to address how the above-quoted limitation is believed to be taught or suggested by either of Fredregill and Rongley. Applicants have reviewed Fredregill and Rongley and have been unable to locate evidence of such a teaching or suggestion.

Accordingly, at least because Fredregill and Rongley fail to teach or suggest *prompting, in the case that a timing condition associated with a merchant is satisfied, an attendant to present the query*, Fredregill and Rongley fail to render obvious claims **1, 3-5, 7-8, 11-17, 19-20, 22-24, and 28**. Applicants therefore respectfully request that this §103(a) ground for rejection of claims **1, 3-5, 7-8, 11-17, 19-20, 22-24, and 28** be withdrawn.

**2. The references fails to teach or suggest: *analyzing, by the processing device, if the attendant properly presented the query* (claims **20** and **28**; generally)**

Applicants respectfully assert that Fredregill and Rongley, alone or in combination, fail to teach or suggest limitations of claims **20** and **28**. In particular,

Fredregill and Rongley fail to teach or suggest *analyzing, by the processing device, if the attendant properly presented the query*.

The Examiner relies upon “Official Notice” to modify Fredregill to show a teaching or suggestion of the above-quoted limitation. Office Action, pg. 10, first paragraph. Applicants respectfully reiterate, “deficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic knowledge' or 'common sense.'” *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). In other words, **a reference must be provided to make up for the deficiencies of Fredregill**. Applicants once again request that the Examiner identify such a reference or withdrawal the currently improperly founded §103(a) ground for rejection of claims **20** and **28**.

Accordingly, at least because Fredregill and Rongley fail to teach or suggest *analyzing, by the processing device, if the attendant properly presented the query*, and at least because no other reference has been provided to make up for such deficiencies, Fredregill and Rongley fail to render obvious claims **20** and **28**. Applicants therefore respectfully request that this §103(a) ground for rejection of claims **20** and **28** be withdrawn.

**3. The references fails to teach or suggest: *compensating the attendant for properly presenting the query, wherein the compensation is different than a standard compensation associated with the attendant* (claim **28**)**

Applicants respectfully assert that Fredregill and Rongley, alone or in combination, fail to teach or suggest limitations of claim **28**. In particular, Fredregill and Rongley fail to teach or suggest *compensating the attendant for properly presenting the query, wherein the compensation is different than a standard compensation associated with the attendant*.

As described in Section B.2. and Section C.2. herein, the Examiner misinterprets the “compensation” contemplated by the pending claims. As described, the claimed “compensation” is not the same as standard employee compensation. Claim **28** is amended herein to specifically recite such a distinction. There is no indication that either

Fredregill or Rongley provide non-standard compensation for proper presentation of queries.

Accordingly, at least because Fredregill and Rongley fail to teach or suggest *compensating the attendant for properly presenting the query, wherein the compensation is different than a standard compensation associated with the attendant*, Fredregill and Rongley fail to render obvious claim **28**. Applicants therefore respectfully request that this §103(a) rejection of claim **28** be withdrawn.

**E. Rejections Under §103(a) – Fredregill, Rongley, Plainfield**

Claim **33** stands rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Fredregill in view of Rongley, in further view of Plainfield. Applicants traverse this ground for rejection as follows.

**1. The references fails to teach or suggest: *determining that the survey question is properly verbally presented by the attendant***

Applicants respectfully assert that Fredregill, Rongley, and Plainfield, alone or in combination, fail to teach or suggest limitations of claim **33**. In particular, Fredregill, Rongley, and Plainfield fail to teach or suggest *determining that the survey question is properly verbally presented by the attendant*.

As described in Section C.5. and Section D.2. herein, the Examiner fails to show how any cited reference teaches or suggest such a limitation. Specifically, nowhere is there any indication that any of Fredregill, Rongley, or Plainfield teach or suggest such a limitation. Instead, the Examiner generally relies upon “Official Notice” to make up for the deficiencies of all three (3) references.

Accordingly, at least because Fredregill, Rongley, and Plainfield fail to teach or suggest *determining that the survey question is properly verbally presented by the attendant*, Fredregill, Rongley, and Plainfield fail to render obvious claim **33**. Applicants therefore respectfully request that this §103(a) rejection of claim **33** be withdrawn.

**F. Rejections Under §103(a) – Fredregill, Rongley, @POS**

Claim **21** stands rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Fredregill in view of Rongley, in further view of @POS. As described in Applicants' previous response, @POS is not a proper prior art reference. The earliest known download date of the @POS website is October 26, 1999, while the present application has an effective filing date of August 17, 1998. Accordingly, this §103(a) rejection of claim **21** is improper and should be withdrawn.

**G. Rejections Under §103(a) – Brockman**

Claims **17-18**, **29**, and **33** stand rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Brockman. Applicants believe claims **17-18**, **29**, and **33** to be patentable at least for the reasons presented herein in Section C.1., Section C.2., and Section C.5. Specifically, Applicants respectfully note that the Examiner has failed to show how Brockman teaches, suggests, or renders obvious the recited claim limitations directed to (i) presenting the queries in the case a timing condition associated with the merchant is satisfied, (ii) rewarding or compensating the attendant for properly presenting the queries, or (ii) determining, by a processing device, that the attendant properly presented the queries.

Accordingly, Applicants respectfully request that this §103(a) ground for rejection of claims **17-18**, **29**, and **33** be withdrawn.

**H. No *Prima Facie* Case of Obviousness**

It is well settled that the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Fritch*, 23 U.S.P.Q.2D 1780, 972 F.2d 1260, 1265 (Fed. Cir. 1992). To reject claims in an application under Section 103, an examiner must show an un-rebutted *prima facie* case of obviousness. *In re Rouffet*, 47 U.S.P.Q.2D 1453, 149 F.3d 1350, 1355 (Fed. Cir. 1998). If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent. *In re Oetiker*, 24 U.S.P.Q.2D 1443, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 5 U.S.P.Q.2d 1596, 837 F.2d 1071 (Fed. Cir. 1988); *In re Jones*, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992). Prior knowledge in the field of the invention must be supported by tangible teachings of reference materials, and the suggestion to combine references must not be derived by hindsight from knowledge of the invention itself. *Cardiac Pacemakers v. St. Jude Medical* 381 F.3d 1371, 1376 (Fed. Cir. 2004). Furthermore, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *In re Kotzab*, 55 U.S.P.Q.2D 1313, 217 F.3d 1365, 1371 (Fed. Cir. 2000).

A finding of obviousness requires that the art contain something to suggest the desirability of the proposed combination. *In re Grabiak*, 226 U.S.P.Q. 870, 769 F.2d 729, 732 (Fed. Cir. 1985). In the absence of such a showing, there is inadequate support for the position that the proposed modification would *prima facie* have been obvious. *Id.* The absence of such a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 42 U.S.P.Q.2D 1378, 110 F.3d 1573, 1579 (Fed. Cir. 1997).

Initially, Applicants direct the Examiner's attention to Applicants' previous response that describes in great detail the various deficiencies of the Examiner's attempt to establish a *prima facie* case for obviousness; those remarks being hereby incorporated herein by reference.

In short, despite Applicants previous remarks and requests for evidentiary support on the record, the Examiner has not changed nor, more importantly, enhanced any arguments with respect to the alleged obviousness of any pending claim. Indeed, many rejections still rely upon entirely unsupported allegations of what was "old and well known" at the time of invention. In other words, instead of providing references that teach or suggest all pending claim limitations, the Examiner has seen fit to make up for the many deficiencies of the references by merely stating that making up for such deficiencies would have been obvious.

Nowhere does the Examiner provide any evidentiary support for the Examiner's various contentions that the alleged combinations would be obvious because they produce positive results – please note that the Examiner's statements, in the absence of an affidavit, do not constitute evidence.

At least for these reasons, and at least because the Examiner has failed to establish a *prima facie* case for obviousness, Applicants respectfully request that all §103(a) grounds for rejection be withdrawn.

### III. New Claims

New claims **37-49** are believed to be patentable over the cited references at least for the reasons otherwise presented herein. Further, after reviewing the cited references, Applicants believe that Fredregill, Rongley, Brockman, and Plainfield fail to teach, suggest, or render obvious, aloe or in combination, at least:

(i) *wherein the timing condition comprises a condition based on a current weather condition (claim 37);*

(ii) *wherein the timing condition comprises one or more of: (i) a condition based on an expected sales volume of the merchant; (ii) a condition based on an actual sales volume of the merchant; (iii) a condition based on an expected service time at the merchant; (iv) a condition based on an actual service time at the merchant; (v) a condition based on customer traffic at the merchant (claim 38);*

(iii) *wherein the rewarding comprises crediting an amount to an employee account associated with the attendant (claim 40);*

(iv) *wherein the determining of the remediation response is further based at least in part on a tone associated with the verbal response of the customer (claim 43);*

(v) *wherein the remediation response comprises one or more of: (i) an expression of thanks; (ii) an apology; (iii) a providing of a benefit; and (iv) a dispatch of assistance (claim 44);*

(vi) *categorizing, based on the analyzing of the verbal response, the verbal response (claims 45-49);*

(vii) *wherein the categorizing of the verbal response comprises: determining a plurality of merchant-defined categories; and associating, based at least in part on the*

*analyzing of the verbal response, one or more of the merchant-defined categories with the verbal response (claim 46);*

*(viii) wherein the categorizing of the verbal response comprises: determining a tone associated with the verbal response; and categorizing the verbal response based on the tone associated with the verbal response (claim 47);*

*(ix) wherein the survey question comprises one or more of: (i) a question associated with a quality of service experienced by the customer; (ii) a question associated with a shopping experience of the customer; and (iii) a question associated with a physical condition of a store (claim 48); or*

*(x) determining, based on the categorizing of the verbal response, a remediation response (claim 49).*

#### **IV. Conclusion**

At least for the foregoing reasons, it is submitted that all pending claims are now in condition for allowance, *or in better form for appeal*, and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remain any questions regarding the present application or the cited reference, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number 203-461-7017 or via e-mail at [cfincham@walkerdigital.com](mailto:cfincham@walkerdigital.com), at the Examiner's convenience.

#### **V. Petition for Extension of Time to Respond**

While no fees are believed to be due at this time, please charge any fees that may be required for this Amendment to Deposit Account No. 50-0271. Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this Amendment timely, and please charge any fee for such an extension to Deposit Account No. 50-0271.

Respectfully submitted,

October 6, 2006  
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